

House Bill 688

By: Representative Hudson of the 124th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to authorize the imposition of a local option sales and use tax for health care within special districts; to provide for applicability with respect to the ceiling on local sales and use taxes; to establish special districts; to provide for procedures, conditions, and limitations for the imposition, collection, disbursement, and removal of the tax; to provide for powers, duties, and authority of the state revenue commissioner; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended by striking subsection (b) of Code Section 48-8-6, relating to prohibitions regarding the imposition of certain local taxes, and inserting in its place a new subsection (b) to read as follows:

“(b) There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment;

provided, however, that the exception provided for under this paragraph shall only apply in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs as defined under paragraph (3) of Code Section 48-8-200, or any combination thereof and with respect to which the county has entered into an intergovernmental contract with a municipality, in which the average waste-water system flow of such municipality is not less than 85 million gallons per day, allocating proceeds to such municipality to be used solely for water and sewer projects and costs as defined under paragraph (3) of Code Section 48-8-200. The exception provided for under this paragraph shall apply only during the period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for under this paragraph shall not apply in any county in which a tax is being imposed under Article 2A of this chapter;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax;

(4) A sales and use tax levied under Article 4 of this chapter; or

(5) A sales and use tax levied under Article 5 of this chapter.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax may not be imposed."

SECTION 2.

Said chapter is further amended by adding a new article at the end thereof to be designated Article 5, to read as follows:

"ARTICLE 5

48-8-230.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this article within a special district, the governing authority of

any county in this state may, subject to the requirement of referendum approval and the other requirements of this article, impose within the special district a special sales and use tax for a limited period of time which tax shall be known as the county health care local option sales tax.

(c) Any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to sales of motor fuels as that term is defined by Code Section 48-9-2 and shall be applicable to the sale of food and beverages as provided for in division (57)(D)(i) of Code Section 48-8-3.

48-8-231.

(a) Prior to the vote of a county governing authority to impose the tax under this article, such governing authority shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the county. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each municipality are to meet to discuss the proposed tax levy. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum. Following such meeting, a county governing authority voting to impose the tax authorized by this article shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify:

(1) The purpose or purposes for which the proceeds of the tax are to be used and may be expended, which purpose or purposes may consist of projects located within or outside, or both within and outside, any incorporated areas in the county or outside the county, as authorized by subparagraph (B) of this paragraph for regional facilities, and which may include any of the following purposes:

(A) Indigent health care;

(B) Health care capital outlay projects;

(C) The retirement of previously incurred general obligation debt with respect to health care capital outlay projects; or

(D) Any combination of the foregoing;

(2) The maximum period of time, to be stated in calendar years or calendar quarters and not to exceed five years;

(3) The maximum cost of the purpose or purposes which will be funded from the proceeds of the tax, which maximum cost shall also be the maximum amount of net proceeds to be raised by the tax; and

(4) If general obligation debt is to be issued in conjunction with the imposition of the tax, the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the county. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. If general obligation debt is to be issued in conjunction with the imposition of the tax, the notice published by the election superintendent shall also include, in such form as may be specified by the county governing authority, the principal amount of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) If the tax is to be imposed and if no debt is to be issued, the ballot shall have written or printed thereon the following:

'() YES Shall a special 1 percent sales and use tax be imposed in _____
County for a period of time not to exceed _____ and for the
() NO raising of not more than \$ _____ for the purpose of _____?'

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

'If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ County in the principal amount of \$ _____ for the above purpose.'

(d) All persons desiring to vote in favor of imposing the tax shall vote 'Yes' and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in favor of imposing the tax then the tax shall be imposed as provided in this article; otherwise the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the county until after 12 months immediately following the

1 month in which the election was held. The election superintendent shall hold and conduct
2 the election under the same rules and regulations as govern special elections. The
3 superintendent shall canvass the returns, declare the result of the election, and certify the
4 result to the Secretary of State and to the commissioner. The expense of the election shall
5 be paid from county funds.

6 (e)(1) If the proposal includes the authority to issue general obligation debt and if more
7 than one-half of the votes cast are in favor of the proposal, then the authority to issue such
8 debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given
9 to the proper officers of the county; otherwise such debt shall not be issued. If the
10 authority to issue such debt is so approved by the voters, then such debt may be issued
11 without further approval by the voters.

12 (2) If the issuance of general obligation debt is included and approved as provided in this
13 Code section, then the governing authority of the county may incur such debt either
14 through the issuance and validation of general obligation bonds or through the execution
15 of a promissory note or notes or other instrument or instruments. If such debt is incurred
16 through the issuance of general obligation bonds, such bonds and their issuance and
17 validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as
18 specifically provided otherwise in this article. If such debt is incurred through the
19 execution of a promissory note or notes or other instrument or instruments, no validation
20 proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10
21 through 36-80-14 except as specifically provided otherwise in this article. In either event,
22 such general obligation debt shall be payable first from the separate account in which are
23 placed the proceeds received by the county from the tax authorized by this article. Such
24 general obligation debt shall, however, constitute a pledge of the full faith, credit, and
25 taxing power of the county; and any liability on such debt which is not satisfied from the
26 proceeds of the tax authorized by this article shall be satisfied from the general funds of
27 the county.

28 48-8-232.

29 With respect to any consolidated government created by the consolidation of a county and
30 one or more municipalities, the levy of a tax under this article by a consolidated
31 government shall be in the same manner as the levy of the tax by any other county.

32 48-8-233.

33 (a) If the imposition of the tax is approved at the special election, the tax shall be imposed
34 on the first day of the next succeeding calendar quarter which begins more than 80 days
35 after the date of the election at which the tax was approved by the voters. With respect to

1 services which are regularly billed on a monthly basis, however, the resolution shall
2 become effective with respect to and the tax shall apply to services billed on or after the
3 effective date specified in the previous sentence.

4 (b) The tax shall cease to be imposed on the earliest of the following dates:

5 (1) If the resolution or ordinance calling for the imposition of the tax provided for the
6 issuance of general obligation debt and such debt is the subject of validation proceedings,
7 as of the end of the first calendar quarter ending more than 80 days after the date on
8 which a court of competent jurisdiction enters a final order denying validation of such
9 debt;

10 (2) On the final day of the maximum period of time specified for the imposition of the
11 tax; or

12 (3) As of the end of the calendar quarter during which the commissioner determines that
13 the tax will have raised revenues sufficient to provide to the county net proceeds equal
14 to or greater than the amount specified as the maximum amount of net proceeds to be
15 raised by the tax.

16 (c)(1) No county shall impose at any time more than a single 1 percent tax under this
17 article.

18 (2) A county in which a tax authorized by this article is in effect may, while the tax is in
19 effect, adopt a resolution or ordinance calling for the reimposition of a tax as authorized
20 by this article upon the termination of the tax then in effect; and a special election may
21 be held for this purpose while the tax is in effect. Proceedings for the reimposition of a
22 tax shall be in the same manner as proceedings for the initial imposition of the tax, but
23 the newly authorized tax shall not be imposed until the expiration of the tax then in effect;
24 provided, however, that in the event of emergency conditions under which a county is
25 unable to conduct a referendum so as to continue the tax then in effect without
26 interruption, the commissioner may, if feasible administratively, waive the limitations of
27 subsection (a) of this Code section to the minimum extent necessary so as to permit the
28 reimposition of a tax, if otherwise approved as required under this Code section, without
29 interruption, upon the expiration of the tax then in effect.

30 (3) Following the expiration of a tax under this article, a county may initiate proceedings
31 for the reimposition of a tax under this article in the same manner as provided in this
32 article for initial imposition of such tax.

33 48-8-234.

34 A tax levied pursuant to this article shall be exclusively administered and collected by the
35 commissioner for the use and benefit of the county imposing the tax. Such administration
36 and collection shall be accomplished in the same manner and subject to the same applicable

provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

48-8-235.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale.

48-8-236.

The proceeds of the tax collected by the commissioner in each county under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this Code section, the remaining proceeds of the tax shall be distributed to the governing authority of the county imposing the tax.

48-8-237.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax

jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, and then against the tax levied under this article.

48-8-238.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Interstate Commerce Commission or the Georgia Public Service Commission.

48-8-239.

(a) As used in this Code section, the term 'building and construction materials' means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax.

48-8-240.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this article.

48-8-241.

Except as provided in Code Section 48-8-6, the tax authorized by this article shall be in addition to any other local sales and use tax. Except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county shall not affect the

1 authority of a county to impose the tax authorized by this article and the imposition of the
2 tax authorized by this article shall not affect the imposition of any otherwise authorized
3 local sales and use tax within the county.

4 48-8-242.

5 (a)(1) The proceeds received from the tax authorized by this article shall be used by the
6 county exclusively for the purpose or purposes specified in the resolution or ordinance
7 calling for imposition of the tax. Such proceeds shall be kept in a separate account from
8 other funds of the county and shall not in any manner be commingled with other funds
9 of the county prior to the expenditure.

10 (2) The governing authority of the county and the governing authority of each
11 municipality receiving any proceeds from the tax pursuant to a contract with the county
12 shall maintain a record of each and every purpose for which the proceeds of the tax are
13 used. A schedule shall be included in each annual audit which shows for each purpose
14 in the resolution or ordinance calling for imposition of the tax the original estimated cost,
15 the current estimated cost if it is not the original estimated cost, amounts expended in
16 prior years, and amounts expended in the current year. The auditor shall verify and test
17 expenditures sufficient to provide assurances that the schedule is fairly presented in
18 relation to the financial statements. The auditor's report on the financial statements shall
19 include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly
20 in all material respects in relation to the financial statements taken as a whole.

21 (b) No general obligation debt shall be issued in conjunction with the imposition of the tax
22 authorized by this article unless the county governing authority determines that, and if the
23 debt is to be validated it is demonstrated in the validation proceedings that, during each
24 year in which any payment of principal or interest on the debt comes due the county will
25 receive from the tax authorized by this article net proceeds sufficient to fully satisfy such
26 liability. General obligation debt issued under this article shall be payable first from the
27 separate account in which are placed the proceeds received by the county from the tax
28 authorized by this article. Such debt, however, shall constitute a pledge of the full faith,
29 credit, and taxing power of the county; and any liability on said debt which is not satisfied
30 from the proceeds of the tax authorized by this article shall be satisfied from the general
31 funds of the county.

32 (c) The resolution or ordinance calling for imposition of the tax authorized by this article
33 may specify that all of the proceeds of the tax will be used for payment of general
34 obligation debt issued in conjunction with the imposition of the tax. If the resolution or
35 ordinance so provides, then such proceeds shall be used solely for such purpose except as
36 provided in subsection (f) of this Code section.

(d) The resolution or ordinance calling for the imposition of the tax authorized by this article may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the other purposes for which such proceeds will be used. In such a case no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e) The resolution or ordinance calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the purpose or purposes for which the proceeds will be used.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the county receives from the tax net proceeds in excess of the maximum cost of the purpose or purposes stated in the resolution or ordinance calling for the imposition of the tax or in excess of the actual cost of such purpose or purposes, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-233 by reason of denial of validation of debt, then all net proceeds received by the county from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the county other than indebtedness incurred pursuant to this article. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the county, it being the intent that any funds so paid into the general fund of the county be used for the purpose of reducing ad valorem taxes.

48-8-243.

The governing authority of the county and the governing authority of each municipality receiving any proceeds from the tax under this article shall maintain a record of each and every purpose for which the proceeds of the tax are used. Not later than December 31 of each year, the governing authority of each local government receiving any proceeds from the tax under this article shall publish annually, in a newspaper of general circulation in the boundaries of such local government, a simple, nontechnical report which shows for each

1 purpose in the resolution or ordinance calling for imposition of the tax the original
2 estimated cost, the current estimated cost if it is not the original estimated cost, amounts
3 expended in prior years, and amounts expended in the current year. The report shall also
4 include a statement of what corrective action the local government intends to implement
5 with respect to each purpose which is underfunded or behind schedule and a statement of
6 any surplus funds which have not been expended for a purpose."

7 **SECTION 3.**

8 This Act shall become effective on July 1, 2005.

9 **SECTION 4.**

10 All laws and parts of laws in conflict with this Act are repealed.